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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket Nos. 120328229-4949-02 and 150121066-5717-02]

RIN 0648-XG140

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; annual adjustment of Atlantic bluefin tuna Purse Seine and Reserve category quotas; inseason quota transfer from the Reserve category to the Longline category.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) Purse Seine and Reserve category quotas for 2018, as it has done annually since 2015. NMFS also is transferring 44.5 metric tons (mt) of BFT quota from the Reserve category to the Longline category after considering the applicable regulatory determination criteria. NMFS has decided that the quota transferred to the Longline category will be distributed to permitted Atlantic Tunas Longline vessels with recent fishing activity, rather than to all qualified Individual Bluefin Quota (IBQ) shares recipients. As a result of this transfer, each associated IBQ account will receive 1,102 lb (0.5 mt) of IBQ.

DATES: Effective *[insert date of filing for public inspection with the Office of the Federal Register]*, through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Tom Warren, or Brad McHale, (978) 281-9260, or Carrie Soltanoff, (301) 427-8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Annual Adjustment of the BFT Purse Seine and Reserve Category Quotas

In 2015, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 14-05 (80 FR 52198, August 28, 2015). As a result, based on the currently codified U.S. quota of 1,058.79 mt (not including the 25 mt allocated by ICCAT to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area), the baseline Purse Seine, Longline, and Reserve category quotas are codified as 184.3 mt, 148.3 mt, and 24.8 mt, respectively. See § 635.27(a). For 2018 to date, NMFS has made the following inseason quota transfers: 14.3 mt

from the General category December 2018 subquota period to the January 2018 subquota period (82 FR 60680, December 22, 2017) and 10 mt from the Reserve category to the General category (83 FR 9232, March 5, 2018), resulting in an adjusted 2018 Reserve category quota of 14.8 mt.

Pursuant to § 635.27(a)(4), NMFS has determined the amount of quota available to the Atlantic Tunas Purse Seine category participants in 2018, based on their BFT catch (landings and dead discards) in 2017. In accordance with the regulations, NMFS makes available to each Purse Seine category participant either 100 percent, 75 percent, 50 percent, or 25 percent of the individual baseline quota allocations based on the previous year's catch, as described in § 635.27(a)(4)(ii), and reallocates the remainder to the Reserve category. NMFS has calculated the amounts of quota available to the Purse Seine category participants for 2018 based on their individual catch levels in 2017 and the codified process adopted in Amendment 7. NMFS did not open the Purse Seine fishery in 2017 because there were no purse seine vessels permitted to fish for BFT and thus on catch in 2017. As a result, each Purse Seine category participant will receive 25 percent of the individual baseline quota amount, which is the required distribution even with no fishing activity under the current regulations. The individual baseline amount is 36.9 mt (184.3 mt divided by five Purse Seine category participants), 25 percent of which is 9.2 mt. Consistent with § 635.27(a)(4)(v)(C), NMFS will notify Atlantic Tunas Purse Seine category participants of the amount of quota available for their use this year through the IBQ electronic system established under § 635.15 and in writing.

By summing the individual available allocations, NMFS has determined that 46.1 mt are available to the Purse Seine category for 2018. Thus, the amount of Purse Seine category quota to be reallocated to the Reserve category is 138.2 mt (184.3 mt - 46.1 mt). This reallocation

results in an adjusted 2018 Reserve category quota of 153 mt (14.8 mt + 138.2 mt), before any further transfers to other categories.

Quota Transfer

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the 14 regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of these criteria, and discuss specific consideration of the criteria relevant for the quota transfer below.

NMFS considered the catches of the Longline category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). As of March 31, the Longline category has landed about 28.2 mt (19 percent) of its 148.3-mt baseline quota. Thus, this is not a situation in which NMFS is transferring quota to avoid the need for closure of the whole Longline category. However, as discussed in more detail in the next section, the additional quota will be distributed to active vessels in the Longline category to help vessel owners account for BFT catch while fostering conditions in which permit holders become more willing to lease IBQ to other vessels through the IBQ system.

Longline vessels must use IBQ to account for their incidental BFT landings and dead discards while fishing for swordfish and yellowfin tuna. In 2018, NMFS modified HMS regulations to require vessels in the pelagic longline fishery to account for bycatch of BFT using IBQ on a quarterly basis instead of on a trip-level basis (82 FR 61489, December 28, 2017). If a vessel has insufficient IBQ to account for such landings and dead discards within a quarter, it goes into “quota debt.”

For the first fishing trip in a calendar year quarter, as defined at § 635.15(b)(3), a vessel is not allowed to fish with pelagic longline gear if it has outstanding quota debt or does not have the minimum amount of quota (*i.e.*, 276 lb (0.125 mt) to depart on a fishing trip in the Atlantic and 551 lb (0.25 mt) to depart on a fishing trip in the Gulf of Mexico). These minimum amounts were specified to allow the landing and accounting of one BFT, based on average fish weight for each area (*e.g.*, 551 lb of quota would allow for the landing and accounting of one BFT in the Gulf of Mexico). Without the quota transfer, active vessels may have difficulty accounting for their BFT catch within a quarter. Transferring 44.5 mt of quota from the Reserve category would provide limited additional opportunities to harvest available swordfish and yellowfin tuna without exceeding the BFT quota available to account for incidental BFT catch during those operations. Regarding the projected ability of the vessels fishing under the particular category quota (here, the Longline category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS cannot predict if all of the 44.5 mt of quota will be used by December 31, given the highly variable nature (*i.e.*, temporally and spatially) of incidental BFT catch. NMFS anticipates, however, that the amount of quota transferred is an amount sufficient to facilitate vessel trips within the next quarters and encourage leasing by other permit holders, without limiting NMFS' ability to meet other needs with the Reserve quota for the remainder of the year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2018 landings and dead discards. A small portion of the overall commercial BFT quota has been used in 2018 to date, consistent with the amount of quota used in the early months of previous years.

NMFS will need to account for all 2018 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations and anticipates having sufficient quota to do that even with this transfer from the Reserve category.

This transfer is consistent with the current quotas, which were established and analyzed in the Atlantic BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments (§ 635.27(a)(8)(v) and (vi)). The adjusted Longline category quota of 192.8 mt remains within the ICCAT quota. The revised Longline category quota supports the broader objectives of Amendment 7, which include reducing BFT interactions and dead discards while maintaining an economically viable swordfish and yellowfin tuna directed fishery.

Regarding “optimizing fishing opportunity” (§ 635.27(a)(8)(x)), the ability of pelagic longline vessel owners to account for BFT with allocated quota or to lease IBQ at an affordable price is key to the success of the IBQ Program and thus to optimize fishing opportunity. An inseason transfer of quota to the Longline category would optimize fishing opportunity, contribute to full accounting for landings and dead discards, and reduce uncertainty in the fishery as a whole. Quota transferred from the Reserve category and distributed directly to active vessels should reduce situations where fishing opportunity for target species is constrained by the unavailability of quota (*e.g.*, because of BFT quota debt or a low IBQ balance) or, in the case of vessels with recent fishing activity that are not associated with IBQ shares, by not finding affordable quota (or sufficient quota) for lease. Detailed information is discussed below showing that without this transfer of quota, some otherwise active vessels will be unable to fish because of quota debt or low balance (below the minimum amount of allocation needed to fish) at the

start of the second quarter. The quota transfer will also reduce vessel owner uncertainty about whether a vessel owner will have sufficient quota to account for future BFT catch. Without this inseason quota transfer, permit holders may be unnecessarily conservative at the beginning of the year, in a way that does not optimize fishing opportunities nor encourage the appropriate functioning of the IBQ leasing program. For example, vessel owners may fear that they will not have enough IBQ to account for BFT retained or discarded dead, and thus may feel they cannot lease IBQ to other vessels. If they do lease out quota, they may set the lease prices unnecessarily high to offset their perceived risks. An inseason distribution of IBQ to active vessels will reduce the perceived risk associated with leasing a portion of their IBQ to other vessels early in the year and will reduce uncertainty in their business plans for the year.

Regarding accounting for dead discards (§ 635.27(a)(8)(xi)) and variations in seasonal distribution or abundance, a quota transfer from the Reserve category to the Longline category would contribute to full accounting of BFT catch by vessels that accrue quota debt (*i.e.*, reduce quota debt), enhance the likelihood that share recipients will lease IBQ to others, and reduce uncertainty in the fishery as a whole. Transferring quota relatively early in 2018 helps to address the diversity of the fishery with respect to the timing of fishing activities in different geographic areas. A quota transfer later in the year may disadvantage those fishing early in the year. In addition, the first quarter of 2018 recently ended and any vessels that have gone into debt will not be able to fish beginning April 1 until they account for quota debt and obtain the minimum amount of allocation needed to fish with pelagic longline gear. Additional inseason transfers could occur later in the year and the additional quota at the beginning of the year helps equalize the distribution among the active vessels.

Based on the considerations above, NMFS is transferring 44.5 mt of the adjusted Reserve category quota to the Longline category. As a result of this quota transfer, the adjusted 2018 Reserve category quota is 108.5 mt (153 mt – 44.5 mt), and the adjusted 2018 Longline category quota is 192.8 mt.

Distribution of Transferred Quota within the Longline Category

After transferring additional BFT quota inseason to the Longline category, NMFS may then distribute the quota either to all qualified IBQ share recipients (*i.e.*, share recipients who have associated their permit with a vessel) or only to permitted Atlantic Tunas Longline vessels with recent fishing activity, whether or not they are associated with IBQ shares. This decision may be based on information for the subject year and previous year, including the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ, the amount of BFT quota in the Reserve category, the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation (§ 635.15(b)(9)). Discussion of the relevant information and justification for how NMFS is distributing the transferred quota in this action follows.

One hundred thirty-six IBQ share recipients were designated under Amendment 7, and the baseline Longline category quota is distributed to those share recipients at the beginning of the year, regardless of their fishing activity. Other permitted Longline vessels may also fish but do not automatically receive annual IBQ allocation from shares. NMFS has examined the

logbook, Vessel Monitoring System (VMS), dealer, and electronic monitoring data for 2017 and for 2018 as of March 31, and has determined that 89 vessels have recent fishing activity and that, of those, 85 were IBQ share recipients. Any vessel activity in the pelagic longline fishery during this date range is sufficient to qualify as “recent fishing activity” (§ 635.15(b)(9)).

Preliminary data indicate that, in 2017, 58 Atlantic Tunas Longline vessels landed a total of 494 BFT (226,738 lb) and 93 BFT were discarded dead. Data from the IBQ system indicate that in 2018 through March 31, 25 Atlantic Tunas Longline vessels landed a total of 122 BFT (59,134 lb). These landings and dead discards (as well as VMS data that document BFT released alive) indicate that pelagic longline vessels have been interacting with BFT in 2017 (and early 2018). The vessels have been accounting for BFT using IBQ, as required by the regulations. It is likely that there will continue to be pelagic longline interactions with BFT and a need for vessels to account for the BFT retained and discarded dead in 2018. Distributing only to active vessels provides a focused, more efficient distribution of quota to those that need it and will help reduce uncertainty and facilitate better business decisions and a more effective leasing program for the remainder of the year. NMFS notes that this is only a small influx of quota to facilitate effective leasing and more certainty in operational decisions at the beginning of the year.

There were 118 IBQ lease transactions in the relevant time period analyzed (85 in 2017; 33 in 2018 through March 31), with 55 distinct share recipients leasing. A total of 200,823 lb were leased (156,148 lb in 2017; 44,675 lb in 2018 through March 31). Seventeen IBQ lessors did not have recent fishing activity. Overall, the average amount of IBQ leased was 1,837 lb in 2017 with an average lease price of \$1.67 per pound, and 1,354 lb in 2018 through March 31 with an average lease price of \$2.84 per pound (weighted average). In discussions with vessel

operators, some have indicated that the ex-vessel price of BFT was variable, and relatively low, and that they essentially made little or no money from BFT given expenses including the cost to lease IBQ. Data indicate that the ex-vessel price of BFT from pelagic longline vessels ranged from \$0.01 to \$35 per pound, with an average of \$4.95 per pound. There were four active vessels that were not associated with IBQ shares that leased quota from share recipients in order to fish with pelagic longline gear. Fifteen distinct vessels had quota debt at any given point in 2017, with an average of 900 lb. Nine vessels had quota debt at any given point in 2018 through March 31, with an average of 1,526 lb. This price and leasing information demonstrates that the leasing market is active, vessels are paying out of pocket to obtain additional IBQ as needed, and that BFT landings are generally not profitable. It also indicates that influxes of quota inseason were helpful in facilitating the effective functioning of the IBQ Program and system. Furthermore, share recipients that are not actively fishing are earning some revenue through leasing to those vessels that are fishing (*i.e.*, from 5 such vessels in 2015 to 17 vessels from January 1, 2017 through March 31, 2018). These trends further support distribution of quota to Atlantic Tunas Longline vessels with recent fishing activity in order to facilitate accounting for BFT catch or reducing the likelihood of accrued quota debt, while helping to lower any additional cost of leasing.

The annual amount of Longline category quota allocated in the IBQ system for 2017 was the baseline Longline category quota of 148.3 mt plus the 45-mt transfer that was effective February 28, 2017, for a total of 193.3 mt (not including the 25 mt for the Northeast Distant Gear Restricted Area). The annual amount of Longline category quota currently allocated in the IBQ system for 2018 is the baseline Longline category quota of 148.3 mt. NMFS has not made any

inseason transfers to the Longline category thus far in 2018. As described above, the amount of quota in the Reserve category following this action's reallocation from the Purse Seine category is 153 mt. As described in the Quota Transfer section above, a small portion of the overall commercial BFT quota has been used in 2018 to date, consistent with the amount of quota used in the early months of previous years. Thus, substantial quota remains available in the Reserve category for future transfers, as appropriate.

NMFS has determined that distribution of quota only to Atlantic Tunas Longline vessels with recent fishing activity fulfills IBQ Program objectives. Such a distribution would provide transferred quota only to the vessels that have recently fished and are therefore most likely to need quota in order to account for BFT interactions. This would include the four Atlantic Tunas Longline vessels with recent fishing activity that are not associated with IBQ shares, as well as the 85 IBQ share recipients with recent fishing activity (representing 63 percent of all IBQ share recipients). For comparison, if the 44.5 mt were distributed to all qualified IBQ share recipients, each would receive 721 lb (0.33 mt) rather than 1,102 lb (0.5 mt) to each of the 89 vessels with recent fishing activity. Some inactive share recipients participate in the IBQ Program through leasing out quota; however, a majority of inactive share recipients (36 of 51) did not lease out quota in the period analyzed. After considering this information, NMFS has decided to distribute the 44.5 mt of quota transferred from the Reserve to the Atlantic Tunas Longline vessels with recent fishing activity.

For those vessels with recent fishing activity that are not associated with valid (*i.e.*, unexpired) permits at the time of the quota transfer, the IBQ will be transferred, but will not be usable by the vessel owner (*i.e.*, may not be leased or used to account for BFT) unless and until

the vessel is associated with a valid permit. When a qualified IBQ share recipient with recent fishing activity receives inseason quota, the quota will be designated as either Gulf of Mexico (GOM) IBQ, Atlantic (ATL) IBQ, or both GOM and ATL IBQ, according to the share recipient's regional designations. Those vessels that are participating in the voluntary Deepwater Horizon Oceanic Fish Restoration Project repose period through June 30, 2018, and that have recent fishing activity, would receive a distribution of inseason quota once the repose period ends. For vessels with recent fishing activity that are not qualified IBQ share recipients, NMFS will assign the distributed quota a regional designation based on where the majority of the vessel's "recent fishing activity" occurred for the relevant period analyzed (either GOM or ATL).

NMFS anticipates that it will announce additional BFT quota adjustments during 2018 for all quota categories, to provide reasonable fishing opportunities throughout the year. An ICCAT recommendation adopted at the annual meeting in November 2017 for western Atlantic BFT management would result in an increase to the baseline U.S. BFT quota (*i.e.*, from 1,058.79 mt to 1,247.86 mt) and subquotas for 2018, and NMFS will undertake domestic implementation of that recommendation through rulemaking in the near future. NMFS also anticipates that some underharvest of the 2017 adjusted U.S. BFT quota will be carried forward to 2018 and placed in the Reserve category, in accordance with the regulations, also in mid-2018 (when complete 2017 catch information is available and finalized). Subsequent notices will be published in the *Federal Register*. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access hmspermits.noaa.gov, for updates.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries, including the pelagic longline fishery, closely through the mandatory landings and catch reports. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT through the electronic BFT dealer reporting system as well as through the online IBQ system. Pelagic longline vessels are required to enter BFT dead discard information through the IBQ system and confirm the accuracy of dealer-reported data. Pelagic longline vessels are also required to report BFT catch through VMS, as well as through the online IBQ system.

Longline category permit holders are reminded that all BFT discarded dead must be reported through VMS, and accounted for in the online IBQ system, consistent with requirements at § 635.15(a).

If needed, subsequent adjustments will be published in the *Federal Register*. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access hmspermits.noaa.gov for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of and an opportunity for public comment on, the transfer from the Reserve category to the Longline category for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason adjustments to quotas and other aspects of BFT fishery management, to respond to the diverse range of factors which may affect BFT fisheries, including ecological (*e.g.*, rebuilding, or the migratory nature of HMS) and commercial (*e.g.*, optimizing fishing opportunity, or reducing bycatch).

NMFS has determined that adjustments to the Reserve and Longline category BFT quotas are warranted. This transfer is consistent with the current quotas, which were established and analyzed in the Atlantic BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments. The adjusted Longline category quota of 192.8 mt remains within the ICCAT quota. The revised Longline category quota supports the broader objectives of Amendment 7, which include reducing BFT interactions and dead discards while maintaining an economically viable swordfish and yellowfin tuna directed fishery. Transferring quota relatively early in 2018 helps to address the diversity of the fishery with respect to the timing of fishing activities in different geographic areas. A quota transfer later in the year may disadvantage those fishing early in the year.

Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable. The transfer of 44.5 mt of quota from the Reserve category to the Longline category needs to happen early in the year to facilitate effective leasing and more certainty in operational decisions. NMFS only recently received updated data from the 2017 fishery, as it recently closed, and from the first couple of months of the 2018 fishery. If NMFS were to offer an opportunity for public comment, it would unnecessarily preclude fishing opportunities for some vessel operators, particularly those that fish early in the fishing season. In addition, the first quarter of 2018 has ended, and some vessels that have gone into debt or have a low balance (below the minimum amount of allocation needed to fish) are not able to fish, as of April 1, until they account for quota debt and obtain the minimum amount of allocation needed to fish with pelagic longline gear. Without this inseason quota transfer, permit holders may be unnecessarily conservative in a way that does not optimize fishing opportunities nor encourage

the appropriate functioning of the IBQ leasing program, which is contrary to the public interest. As explained earlier, NMFS conducted notice-and-comment rulemaking on the underlying regulations that set forth the criteria used for this action, and therefore notice-and-comment rulemaking is not necessary for this inseason action.

Delays in adjusting the Reserve and Longline category quotas would adversely affect those permitted Atlantic Tunas Longline vessels that would otherwise have an opportunity to reduce or resolve quota debt, lease quota to other vessels, as well as delay potential beneficial effects on the ability for vessel operators to make business plans for their future. NMFS is trying to balance providing opportunity to the pelagic longline fishery, with the reduction of BFT bycatch, and delaying this action would be contrary to the public interest. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.15(b), 635.15(f), 635.27(a)(4) and (a)(7), 635.27(a)(8) and (9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 13, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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